

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSEPH DAVIS,

Plaintiff,

v.

CIVIL CASE NO. 05-71503
HON. MARIANNE O. BATTANI

MICHIGAN DEPARTMENT OF
CORRECTIONS, BUREAU OF HEALTH CARE
SERVICES, CINDI
MURPHY, R.N., M.S.P., DR. AUSTIN,
DR. ANTONINI, and SONYA GREENE, R.N.,

Defendants.

ORDER DENYING PLAINTIFF'S REQUEST FOR RELIEF FROM JUDGMENT

Before the Court is Plaintiff's Request for Relief From Judgment (Doc. #46). On March 9, 2006, this Court issued an order adopting Magistrate Judge Komives's February 9, 2006, Report and Recommendation ("R&R"). The R&R recommended that the Court dismiss Plaintiff's civil rights claims. Plaintiff claims that he did not receive the R&R in a timely fashion because it was addressed incorrectly. Federal Rule of Civil Procedure 60(b) allows a court to:

. . . relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Plaintiff included his objections to the R&R to establish that his motion for relief from

judgment is justified. Specifically, Plaintiff contends that he has exhausted all available administrative remedies against defendants Dr. Antonini and the Michigan Department of Corrections' Bureau of Health Care, and that the Bureau of Health Care is not immune from suit under the Eleventh Amendment. However, after fully reviewing Plaintiff's objections, the Court finds that the Bureau of Health Care is entitled to immunity under the Eleventh Amendment. See Lee v. Mich. Parole Board, 104 Fed. Appx. 490, 492 (6th Cir. 2004), Sims v. Mich. Dep't of Corrs., 23 Fed. Appx. 214, 215 (6th Cir. 2001), Fleming v. Martin, 24 Fed. Appx. 258, 259 (6th Cir. 2001). The Court also finds that Plaintiff has failed to establish that the grievances naming Dr. Antonini were administratively exhausted by including copies of the grievances or particularized averments that establish the grievances were appealed through the Step 3 grievance process.

Accordingly, **IT IS ORDERED** that Plaintiff's Motion for Relief From Judgment is **DENIED**.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATED: June 12, 2006

CERTIFICATE OF SERVICE

A Copy of this Order was mailed to Joseph Davis on this date by ordinary mail and electronic filing, to his last known address.

s/Bernadette M. Thebolt
DEPUTY CLERK

